

AMENDED IN SENATE JUNE 3, 2010

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

AMENDED IN ASSEMBLY MARCH 18, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Blakeslee
(Coauthor: Assembly Member Harkey)
(Coauthor: Senator Benoit)

December 1, 2008

~~An act to amend Section 454.5 of, to add Section 454.35 to, and to add Chapter 7.7 (commencing with Section 2835) to Part 2 of Division 1 of, the Public Utilities Code, relating to energy. An act to amend Section 5898.20 of the Streets and Highways Code, relating to public improvements.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Blakeslee. ~~Energy storage facilities. Improvement Act of 1911: contractual assessments.~~

Existing law, the Improvement Act of 1911, authorizes the legislative body of any public agency, as defined, to determine that it would be convenient, advantageous, and in the public interest to designate an area within the public agency, as specified, within which authorized public agency officials and property owners may enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property, as specified.

Existing law requires the legislative body to make these determinations by adopting a resolution indicating its intention to do so and requires that the resolution include specified information and directs an appropriate public agency official to prepare a prescribed report.

This bill would define the term “permanently fixed,” for purposes of financing the installation of distributed generation renewable energy sources, to include systems that are attached to specified types of real property pursuant to an electricity purchase agreement between the owner of the system and the owner of the assessed property, if the agreement satisfies prescribed criteria.

This bill would also require the legislative body of a public agency to establish criteria to ensure that a real property owner is guaranteed the electricity from a distributed generation renewable energy source in the event that the owner of the system files for bankruptcy, as specified. The bill would also require the legislative body of the public agency to make a finding that an electricity purchase agreement funded with a contractual assessment is structured to provide protections to the property owner in the event of a bankruptcy of the owner of the system, as specified.

~~(1) Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including electrical corporations, and the commission is authorized to fix the rates and charges for every public utility. Existing law authorizes the commission to approve an increase of $\frac{1}{2}$ of 1% to 1% in the rate of return otherwise allowed an electrical corporation for investment by the corporation in generation facilities using renewable resources.~~

~~This bill would authorize the commission, after a hearing, to approve a similar increase in the rate of return for investment by a corporation in energy storage systems, as defined, that (A) are used and useful, (B) have costs of construction and operation over their useful life that are less than other facilities that provide load shifting, voltage support, and scheduling and shaping services for intermittent renewable energy resources, and (C) perform any of 4 specified purposes.~~

~~(2) The existing Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The elements, among other things, require that the plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, until a 20% renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring~~

that at least an additional 1% per year of the electricity sold by the electrical corporation is generated from eligible renewable energy resources, provided sufficient funds are made available to cover certain above-market costs.

This bill would require that an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the renewables portfolio standard established pursuant to the California Renewables Portfolio Standard Program. The bill would add a requirement that the procurement plan include a showing that the electrical corporation will incorporate cost-effective, reliable, and feasible energy storage systems, both centralized and distributed, that reduce emissions of greenhouse gases, or reduce demand for peak electrical generation, or improve the reliable operation of the electrical grid.

(3) Under existing law, a violation of the Public Utilities Act or an order, decision, rule, direction, demand, or requirement of the commission is a crime. Because certain of the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes-no.
State-mandated local program: yes-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5898.20 of the Streets and Highways Code
- 2 is amended to read:
- 3 5898.20. (a) (1) The legislative body of any public agency
- 4 may determine that it would be convenient and advantageous to
- 5 designate an area within the public agency, which may encompass
- 6 the entire public agency or a lesser portion, within which authorized
- 7 public agency officials and property owners may enter into

1 voluntary contractual assessments for public improvements and
2 to make financing arrangements pursuant to this chapter.

3 (2) The legislative body of any public agency may also
4 determine that it would be convenient, advantageous, and in the
5 public interest to designate an area within the public agency, which
6 may encompass the entire public agency or a lesser portion, within
7 which authorized public agency officials and property owners may
8 enter into voluntary contractual assessments to finance the
9 installation of distributed generation renewable energy sources or
10 energy or water efficiency improvements that are permanently
11 fixed to real property pursuant to this chapter.

12 (b) The legislative body shall make these determinations by
13 adopting a resolution indicating its intention to do so. The
14 resolution of intention shall include a statement that the public
15 agency proposes to make voluntary contractual assessment
16 financing available to property owners, shall identify the kinds of
17 public works, distributed generation renewable energy sources, or
18 energy or water efficiency improvements that may be financed,
19 shall describe the boundaries of the area within which voluntary
20 contractual assessments may be entered into, and shall briefly
21 describe the proposed arrangements for financing the program,
22 including a brief description of criteria for determining the
23 creditworthiness of a property owner. The resolution of intention
24 shall state that it is in the public interest to finance the installation
25 of distributed generation renewable energy sources or energy or
26 water efficiency improvements, or both, pursuant to paragraph (2)
27 of subdivision (a), if applicable. The resolution shall state that a
28 public hearing should be held at which interested persons may
29 object to or inquire about the proposed program or any of its
30 particulars, and shall state the time and place of the hearing. The
31 resolution shall direct an appropriate public agency official to
32 prepare a report pursuant to Section 5898.22 and to enter into
33 consultations with the county auditor's office or county controller's
34 office in order to reach agreement on what additional fees, if any,
35 will be charged to the city or county for incorporating the proposed
36 voluntary contractual assessments into the assessments of the
37 general taxes of the city or county on real property.

38 (c) As used in this chapter, each of the following terms shall
39 have the following meaning:

1 (1) “Efficiency improvements” means permanent improvements
2 fixed to residential, commercial, industrial, agricultural, or other
3 real property.

4 (2) “Legislative body” means the governing body of a public
5 agency.

6 (3) (A) For the purpose of financing the installation of water
7 efficiency improvements, “public agency” means a city, county,
8 city and county, municipal utility district, community services
9 district, sanitary district, sanitation district, or water district, as
10 defined in Section 20200 of the Water Code. The definition of
11 “city” in Section 5005 shall not apply to this subparagraph.

12 (B) For the purpose of financing the installation of distributed
13 generation renewable energy sources or energy efficiency
14 improvements, “public agency” means a county, city, city and
15 county, or a municipal utility district, an irrigation district, or public
16 utility district that owns and operates an electric distribution
17 system. The definition of “city” in Section 5005 shall not apply to
18 this subparagraph.

19 (C) For the purpose of financing the public improvements,
20 “public agency” means a city as defined in Section 5005.

21 (4) *For the purpose of financing the installation of distributed*
22 *generation renewable energy sources, “permanently fixed”*
23 *includes, but is not limited to, systems attached to a residential,*
24 *commercial, industrial, agricultural, or other real property*
25 *pursuant to an electricity purchase agreement between the owner*
26 *of the system and the owner of the assessed property, if the*
27 *electricity purchase agreement contains all of the following*
28 *provisions:*

29 (A) *The attached system is an eligible renewable energy*
30 *resource pursuant to the California Renewables Portfolio Standard*
31 *Program (Article 16 (commencing with Section 399.11) of Chapter*
32 *2.3 of Part 1 of Division 1 of the Public Utilities Code).*

33 (B) *The term of the electricity purchase agreement is at least*
34 *as long as the term of the related assessment contract.*

35 (C) *The owner of the attached system agrees to install, maintain,*
36 *and monitor the system for the entire term of the electricity*
37 *purchase agreement.*

38 (D) *The owner of the attached system is not permitted to remove*
39 *the system prior to completion of the term of the contractual*
40 *assessment lien.*

1 (E) After installation, the electricity is purchased by a single
2 payment using the funds from the contractual assessment program.

3 (F) The right to receive the electricity from the system is tied
4 to the ownership of the assessed real property and is required to
5 be automatically transferred with the title to the real property
6 whether the title is transferred by voluntary sale or judicial or
7 nonjudicial foreclosure or by any other means.

8 (G) The system shall provide electricity to the assessed property
9 and to no other property or location.

10 (H) The property owner, and all successors in interest to the
11 real property, shall not use the electricity generated from the
12 system for any location other than the assessed property.

13 (I) The electricity purchase agreement identifies the public
14 agency that is a party to the assessment contract on the real
15 property as a third-party beneficiary of the electricity purchase
16 agreement until the assessment lien on the property has been fully
17 paid and, only until that time, prohibits amendments to the
18 electricity purchase agreement without the consent of the public
19 agency.

20 (J) The property owner is guaranteed, pursuant to criteria
21 adopted by the legislative body of a public agency as required by
22 subdivision (d), the electric power from the system.

23 (d) The legislative body of the public agency shall establish
24 criteria to ensure that a real property owner is guaranteed the
25 electricity from a distributed generation renewable energy source
26 in the event that the owner of the system files for bankruptcy, to
27 the extent permitted by federal law, prior to authorizing public
28 agency officials and property owners to enter into voluntary
29 contractual assessments for financing the installation of distributed
30 generation renewable energy sources attached to a residential,
31 commercial, industrial, agricultural, or other real property
32 pursuant to a contract that meets the provisions of paragraph (4)
33 of subdivision (c).

34 (e) The legislative body of the public agency shall make a finding
35 that any electricity purchase agreement funded with a contractual
36 assessment under this chapter is structured, to the extent permitted
37 by federal law, to provide protections to the property owner in the
38 event of a bankruptcy of the owner of the system. The protections
39 may include, but need not be limited to, the use of a special purpose

1 *entity or other adequate security as required by the legislative*
2 *body.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, June 1, 2009. (JR11)**

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